No. 8883

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1963

ALEX MICELE

Petitioner,

UNITED STATES OF AMERICA

Respondent.

Certiorari to the United States Court of Appeals
for the Seventh Circuit

REPLY BRIEF FOR PETITIONER

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May it Please the Court:

The Respondent's Brief in opposition to the Petition for a Writ of Certiorari to the Circuit Court of Appeals for the Seventh Circuit contains errors in the summary of evidence (Gov't. Brief 3-8) which are of material, factual importance, and if not brought to this court's attention could result in the reaching of a decision not warranted by the facts as presented upon the trial of this cause.

Respondent's oppositional statement does not respond to the assertion of this petitioner that the conduct, action and comment of an attorney for a co-defendant upon the trial of this cause resulted in prejudice to petitioner, nor does the Respondent's Brief in Opposition attempt the premise that a conspiracy has been proved upon the trial of the cause. It appears that the presentation in response to the Petition presented is one supposing that the decision of the Circuit Court of Appeals for the 7th Circuit cannot be sustained, by fact of law, but should be sustained because the petitioner may have associated with bad fellows in the past.

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THE ACTIONS, CONDUCT AND STATEMENTS OF THE ATTORNEY FOR THE CO-DEFENDANT DID SUBSTANTIALLY PREJUDICE THE PETITIONER

It is the Government would have us believe, a single isolated question as to the criminal background of the petitioner had been propounded by the attorney for the co-defendant Gross? Brief p. 9. By such words there might be validity to the government contention that no reversible error resulted to petitioner. However, the fact was that there were repeated warnings and cautioning of the trial court as to the conduct and statements of the attorney for petitioners co-defendant. R. 1046. The attorney [illegible] after having a slightly different course of questioning [illegible]

It [illegible] the Government [illegible] propriety and fairness that an officer of the court should act with [illegible] *Berger v. United States*, [illegible] Government Brief, p. 10] to state that *Johnson* will not [illegible]

THE EVIDENCE DOES NOT SUSTAIN THE ALLEGATION OF THE INDICTMENT AS TO ONE GENERAL CONSPIRACY

Lefemine, and the Witness Mijazzo did not know for who Miccle is supposed to have left the money. (A. 67) Evidence was not presented that Guido and Miccle were partners (Gov't. Brief p. 11) in any sort of activity; that the purported phone call was to Guido (Gov't. Brief p. 6); that the return was to be made to the defendant Guido (Gov't. Brief p. 11).

The assertion of any general conspiracy by way of argument is made solely by ignoring the time, geographical and personnel gaps that were demonstrated and acknowledged by the government in their resume of the evidence (Gov't. Brief pp. 3-7).

The evidence taken in the light most favorable to the government, creates a situation found in *Kotteakos v. United States*, 328 U.S. 750. Louis Vasello is shown to be the sole common character, the center, the hub.

The evidence is not of a definitive nature as to what relation Louis Guido had to Louis Vasello and even more certainly, there is no relationship shown between Guido, Vasello and Miccle.

THE GRAND JURY MINUTES SHOULD HAVE BEEN MADE AVAILABLE TO THE DEFENSE FOR USE DURING CROSS EXAMINATION

FAILURE OF THE COURT TO GIVE AN INSTRUCTION AS TO THE NATURE OF TESTIMONY OF A FELON ACCOMPLICE WITNESS

The Government in its brief (pp. 21-22) still avoids comment upon whether or not the petitioner was entitled to an instruction as to the manner in which the testimony of a felon accomplice is to be received. The instruction complained of not for an error in commission, but an error in omission, the nature of a felon witness and the "care and caution" with which testimony from a felon is to be received.

WHETHER THE GOVERNMENT COUNSEL MAY IN FORM THE JURORS THAT ANY PARTICULAR WITNESS TOLD THE TRUTH

The Government Brief (pp. 20-21) argues that an invitation was extended for government counsel to state, with his authority, that the witness Miazzo told the truth before the Grand Jury and upon the trial of the indictment because defense counsel told the jury that the witness Miazzo lied to the F.B.I. and to the Grand Jury. (Gov't p. 21)

Examination of the record discloses that it was on cross-examination that the witness Miazzo stated he lied to the F.B.I. (A. 51) and that he told a different story on his first appearance before the Grand Jury (A. 51) and not any of the defense counsel that so made any statements.

The Government has failed to deny that such argument of the government attorney was an improper allusion to the fact that the defendant did not testify in his own behalf.

CONCLUSION

The original brief and the matters stated here are respectfully submitted to your honors as sufficient and worthy reasons upon which the petition for the Writ of Certiorari should be granted.

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